

SENATE BILL No. 409

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-21; IC 27-4-1-4.

Synopsis: Insurer use of credit information. Imposes certain requirements and restrictions concerning the use of credit information in the underwriting of property and casualty insurance. Makes the use of credit information or a credit scoring methodology that violates antidiscrimination provisions an unfair and deceptive act and practice in the business of insurance.

Effective: July 1, 2002.

Nugent, Paul

January 10, 2002, read first time and referred to Committee on Insurance and Financial Institutions.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 409

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]:

4 **Chapter 21. Credit Information in Property and Casualty**
5 **Insurance**

6 **Sec. 1. As used in this chapter, "applicant" means an individual**
7 **who applies for a policy of property and casualty insurance.**

8 **Sec. 2. As used in this chapter, "commissioner" refers to the**
9 **commissioner of the department.**

10 **Sec. 3. As used in this chapter, "credit information" means**
11 **credit related information obtained through a review of a credit**
12 **history, credit report, or credit score, or on an application for a**
13 **policy of property and casualty insurance.**

14 **Sec. 4. As used in this chapter, "credit score" means a number**
15 **or rating derived through a credit scoring methodology.**

16 **Sec. 5. As used in this chapter, "credit scoring methodology"**
17 **means the particular algorithm, computer model, or other method**



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used by an insurer to reduce to a numerical rating for use in the insurance underwriting process certain credit history data contained in an individual's credit report.

Sec. 6. As used in this chapter, "department" refers to the department of insurance created under IC 27-1-1-1.

Sec. 7. As used in this chapter, "insured" means an individual who is entitled to coverage under a policy of property and casualty insurance.

Sec. 8. As used in this chapter, "insurer" means a person that:

- (1) is described in IC 27-1-2-3(x); and
- (2) issues a policy of property and casualty insurance.

Sec. 9. As used in this chapter, "property and casualty insurance" means one (1) or more of the kinds of insurance described in Class 2 and Class 3 of IC 27-1-5-1.

Sec. 10. This chapter applies to an individual policy of property and casualty insurance.

Sec. 11. (a) An insurer may not, based solely on credit information, refuse to issue, refuse to renew, or cancel a policy of property and casualty insurance.

(b) An insurer does not violate subsection (a) if the insurer offers to provide continuous coverage to an insured under a policy of property and casualty insurance underwritten:

- (1) by an affiliate; or
- (2) in a different rating class;

of the insurer.

Sec. 12. (a) If credit information is used in addition to other criteria as the basis for a refusal to issue, refusal to renew, or cancellation of a policy of property and casualty insurance, the insurer shall provide notice of the refusal to issue, refusal to renew, or cancellation according to the provisions of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) to the insured or applicant.

(b) An insured or applicant may, not more than ninety (90) days after the insured or applicant receives the notice required under subsection (a), request in writing from the insurer an explanation of the principal factors involved in the refusal to issue, refusal to renew, or cancellation of the policy of property and casualty insurance.

(c) Not more than twenty-one (21) business days after an insurer receives a request under subsection (b):

- (1) the insurer; or
- (2) an insurance producer or a third party that:

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(A) possesses the information necessary to provide an explanation requested under subsection (b); and

(B) is directed by the insurer to provide the requested explanation;

shall provide in writing to the insured or applicant the requested explanation.

(d) If an insurer, in the notice provided under subsection (a), provided the explanation of the principal factors requested under subsection (b), the insurer has met the requirement of subsection (c).

Sec. 13. (a) The commissioner may request from an insurer that uses a credit score:

(1) information that supports the insurer's use of a credit score; and

(2) the insurer's credit scoring methodology.

(b) The commissioner may request from an insurer that uses credit information other than a credit score to provide to the commissioner information that supports the insurer's use of the credit information.

(c) An insurer shall make information requested by the commissioner under this section available for examination by the department at the office of the insurer.

(d) Information provided by an insurer under this section is confidential.

Sec. 14. (a) An insurer shall not use credit information as a pretext for discrimination against an insured or applicant that is based on the gender, race, nationality, or religion of the insured or applicant.

(b) A credit scoring methodology may not be used by an insurer if the credit scoring methodology incorporates the gender, race, nationality, or religion of an insured or applicant.

Sec. 15. A willful violation of section 14 of this chapter is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4, as determined by the commissioner.

Sec. 16. This chapter is not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.132-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

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(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to

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1 be made, published, disseminated, circulated, delivered to any
 2 person, or placed before the public, any false statement of
 3 financial condition of an insurer with intent to deceive. Making
 4 any false entry in any book, report, or statement of any insurer
 5 with intent to deceive any agent or examiner lawfully appointed
 6 to examine into its condition or into any of its affairs, or any
 7 public official to which such insurer is required by law to report,
 8 or which has authority by law to examine into its condition or into
 9 any of its affairs, or, with like intent, willfully omitting to make a
 10 true entry of any material fact pertaining to the business of such
 11 insurer in any book, report, or statement of such insurer.

12 (6) Issuing or delivering or permitting agents, officers, or
 13 employees to issue or deliver, agency company stock or other
 14 capital stock, or benefit certificates or shares in any common law
 15 corporation, or securities or any special or advisory board
 16 contracts or other contracts of any kind promising returns and
 17 profits as an inducement to insurance.

18 (7) Making or permitting any of the following:

19 (A) Unfair discrimination between individuals of the same
 20 class and equal expectation of life in the rates or assessments
 21 charged for any contract of life insurance or of life annuity or
 22 in the dividends or other benefits payable thereon, or in any
 23 other of the terms and conditions of such contract; however, in
 24 determining the class, consideration may be given to the
 25 nature of the risk, plan of insurance, the actual or expected
 26 expense of conducting the business, or any other relevant
 27 factor.

28 (B) Unfair discrimination between individuals of the same
 29 class involving essentially the same hazards in the amount of
 30 premium, policy fees, assessments, or rates charged or made
 31 for any policy or contract of accident or health insurance or in
 32 the benefits payable thereunder, or in any of the terms or
 33 conditions of such contract, or in any other manner whatever;
 34 however, in determining the class, consideration may be given
 35 to the nature of the risk, the plan of insurance, the actual or
 36 expected expense of conducting the business, or any other
 37 relevant factor.

38 (C) Excessive or inadequate charges for premiums, policy
 39 fees, assessments, or rates, or making or permitting any unfair
 40 discrimination between persons of the same class involving
 41 essentially the same hazards, in the amount of premiums,
 42 policy fees, assessments, or rates charged or made for:

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- 1 (i) policies or contracts of reinsurance or joint reinsurance,
 2 or abstract and title insurance;
 3 (ii) policies or contracts of insurance against loss or damage
 4 to aircraft, or against liability arising out of the ownership,
 5 maintenance, or use of any aircraft, or of vessels or craft,
 6 their cargoes, marine builders' risks, marine protection and
 7 indemnity, or other risks commonly insured under marine,
 8 as distinguished from inland marine, insurance; or
 9 (iii) policies or contracts of any other kind or kinds of
 10 insurance whatsoever.

11 However, nothing contained in clause (C) shall be construed to
 12 apply to any of the kinds of insurance referred to in clauses (A)
 13 and (B) nor to reinsurance in relation to such kinds of insurance.
 14 Nothing in clause (A), (B), or (C) shall be construed as making or
 15 permitting any excessive, inadequate, or unfairly discriminatory
 16 charge or rate or any charge or rate determined by the department
 17 or commissioner to meet the requirements of any other insurance
 18 rate regulatory law of this state.

19 (8) Except as otherwise expressly provided by law, knowingly
 20 permitting or offering to make or making any contract or policy
 21 of insurance of any kind or kinds whatsoever, including but not in
 22 limitation, life annuities, or agreement as to such contract or
 23 policy other than as plainly expressed in such contract or policy
 24 issued thereon, or paying or allowing, or giving or offering to pay,
 25 allow, or give, directly or indirectly, as inducement to such
 26 insurance, or annuity, any rebate of premiums payable on the
 27 contract, or any special favor or advantage in the dividends,
 28 savings, or other benefits thereon, or any valuable consideration
 29 or inducement whatever not specified in the contract or policy; or
 30 giving, or selling, or purchasing or offering to give, sell, or
 31 purchase as inducement to such insurance or annuity or in
 32 connection therewith, any stocks, bonds, or other securities of any
 33 insurance company or other corporation, association, limited
 34 liability company, or partnership, or any dividends, savings, or
 35 profits accrued thereon, or anything of value whatsoever not
 36 specified in the contract. Nothing in this subdivision and
 37 subdivision (7) shall be construed as including within the
 38 definition of discrimination or rebates any of the following
 39 practices:

- 40 (A) Paying bonuses to policyholders or otherwise abating their
 41 premiums in whole or in part out of surplus accumulated from
 42 nonparticipating insurance, so long as any such bonuses or

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abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of

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competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

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- 1 (iv) insures against a flight cancellation to which the ticket
 2 relates.
 3 (14) Refusing, because of the for-profit status of a hospital or
 4 medical facility, to make payments otherwise required to be made
 5 under a contract or policy of insurance for charges incurred by an
 6 insured in such a for-profit hospital or other for-profit medical
 7 facility licensed by the state department of health.
 8 (15) Refusing to insure an individual, refusing to continue to issue
 9 insurance to an individual, limiting the amount, extent, or kind of
 10 coverage available to an individual, or charging an individual a
 11 different rate for the same coverage, solely because of that
 12 individual's blindness or partial blindness, except where the
 13 refusal, limitation, or rate differential is based on sound actuarial
 14 principles or is related to actual or reasonably anticipated
 15 experience.
 16 (16) Committing or performing, with such frequency as to
 17 indicate a general practice, unfair claim settlement practices (as
 18 defined in section 4.5 of this chapter).
 19 (17) Between policy renewal dates, unilaterally canceling an
 20 individual's coverage under an individual or group health
 21 insurance policy solely because of the individual's medical or
 22 physical condition.
 23 (18) Using a policy form or rider that would permit a cancellation
 24 of coverage as described in subdivision (17).
 25 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
 26 vehicle insurance rates.
 27 (20) Violating IC 27-8-21-2 concerning advertisements referring
 28 to interest rate guarantees.
 29 (21) Violating IC 27-8-24.3 concerning insurance and health plan
 30 coverage for victims of abuse.
 31 (22) Violating IC 27-8-26 concerning genetic screening or testing.
 32 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
 33 insurance producers.
 34 **(24) Violating IC 27-2-21-14 concerning discrimination in**
 35 **underwriting of property and casualty insurance.**

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